IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5623 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAIYUMALI S/O. AMIRUDDIN IBRAHIMMIYA. - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR GIRISH D BHATT for Petitioner(s) : 1, 1.2.1,1.2.2
MR SIRAJ GORI AGP for Respondent(s) : 1 - 2.
MR SK BUKHARI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 16/11/2005

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged the order dated 13th February, 1990 passed by the Additional Chief Secretary (Appeals), Revenue

Department, Govt. of Gujarat. By the impugned order Additional Chief Secretary was pleased to set aside the order dated 18th February, 1988 passed by Collector, Mehsana. The petitioner herein had applied for and was granted five gunthas of land in Village Ganvada, Taluka, Sidhpur for development of a poultry farm by the Collector by his order dated 18th February, 1988. The land in question earlier formed the part of guchar land of the village which was deleted from the said purpose was recalled by the Collector and granted to the petitioner. The Panchayat was aggrieved by the order of the Collector and, therefore, preferred Revision Application before the State Government. Additional Chief Secretary as mentioned allowed the Revision Application and set aside the order of the Collector. In the impugned order, it was observed that though it is within the powers of the Collector to delete land earmarked for guchar, however no such proposal or deliberations were undertaken before exercise of power. It was further observed that before deleting the land it is required to be observed whether there is sufficient land available for guchar. Necessary notices also have to be issued and exhibited on the notice board giving one month time before taking final decision which has to be

done after hearing the objecting parties. No such procedure appears to have taken place in the present case. Additional Chief Secretary, therefore, concluded that the decision of the Collector to delete the land from the purpose of guchar cannot be held to be legal. It was additionally observed that granting such land to an individual would not be a public purpose and under Section 96 of the Panchayat Act of 1963 land can be alloted only for public purpose. On all these grounds the Additional Chief Secretary was pleased to set aside the order passed by the Collector.

2. Learned advocate Shri Bhatt for the petitioners submitted that the Additional Chief Secretary erred in allowing the Revision Application of the Gram Panchayat. He relied on the order passed by the Collector on 19/2/1988 and submitted that the same was in accordance with law and called for no interference. He also submitted that allotment of land for purpose of poultry farm development that too in favour of a member of a minority community would amount to a public purpose and the Additional Chief Secretary was not justified in observing that the purpose for which the land was alloted was not a public purpose. Reliance was placed on the

decision of this Court in the case of **Samadhiyala Gram Panchayat vs. State of Gujarat and Ors. reported in 1984 GLH 905** in which the learned Single Judge observed that to allot guchar land to a member of a backward class for its cultivation would be a public purpose.

3. On the other hand learned AGP Mr. Gori supported the order passed by the Additional Chief Secretary and submitted that in exercise of powers under Article 226 and 227 of the Constitution of India no interference is called for.

4. Upon hearing the learned advocates it can be appreciated that the Additional Chief Secretary was pleased to set aside the order passed by the Collector on various grounds. Preliminarily it was found that proper procedure for deleting the land which was reserved for the purpose of guchar was not undertaken. Necessary notices, hearing and deliberation had not taken place before recalling the land which was allotted to the Panchayat and earmarked and reserved for guchar. On this count alone, the order of the Additional Chief Secretary is required to be upheld. It is also doubtful whether the decision in case of Samadhiyala Gram Panchayat

(supra) would apply in the facts of the present case where the land was being alloted for the purpose of development of poultry farm and the receipent of the land was not a member of the backward class community.

5. In view of the above discussion, I do not find any possibility of interference with the order passed by the Additional Chief Secretary. The petition is, therefore, required and hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

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